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Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

DO/PTO Rev. 6/95	U.S. Department of Commerce Patent and Trademark Office	Attorney Docket Number	1037BP-1
		First Named Inventor	RHODES, Mike
<b>COMPLETE IF KNOWN</b>			
		Application Number	09/831,579
		Filing Date	
		Group Art Unit	
		Examiner Name	

Declaration Submitted with Initial Filing      OR       Declaration Submitted after Initial Filing

As below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed for which a patent is sought on the invention entitled:

**"BIO-OXIDATION PROCESS AND APPARATUS"**

*(Title of the Invention)*

the specification of which

is attached hereto

OR

was filed on  
(MM/DD/YYYY)

22 October 1999

as United States Application Number or PCT International

Application Number

PCT/AU99/00917

and was amended on  
(MM/DD/YYYY)

(if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37 Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any Pct international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				Yes	No
PP7180	Australia	November 18, 1998	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Additional foreign application numbers are listed on a supplemental priority sheet attached hereto.

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below

Application Number(s)	Filing Date (MM/DD/YYYY)	<input type="checkbox"/>	Additional provisional application numbers are listed on a supplemental priority sheet attached hereto.

Burden Hour Statement: This form is estimated to take .4 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231.  
DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents Washington, DC 20231

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## DECLARATION

Page 2

I hereby claim the benefit under Title 35, United States Code § 120 of any United States application(s), or § 365(c) of any PCT International application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States of PCT international application in the manner provided by the first paragraph of Title 35, United States Code § 112.1 acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)
	PCT/AU99/00917	October 22, 1999	

Additional U.S. or PCT international application numbers are listed on a supplemental priority sheet attached hereto.

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

<input checked="" type="checkbox"/> Firm Name OR	SHERIDAN ROSS P.C.	Customer Number or label	
<input type="checkbox"/> List attorney(s) and/or agent(s) name and registration number below:			
Name	Registration Number	Name	Registration Number
ZINGER, DAVID F.	29,127	HANSEN, LEWIS D.	35,536
GROSETH, CRAIG C.	31,713	KOVARIK, JOSEPH E.	33,005
BLAKELY, TODD P.	31,328	SWARTZ, DOUGLAS W.	37,739
CONNELL, GARY J	32,020	KUGLER, BRUCE A.	38,942
CROOK, WANNELL M.	31,071	BRUNELLI, ROBERT R.	39,617
STAVISH, SABRINA CROWLEY	33,374	HANSRA, TEJPAL S.	38,172

Additional attorney(s) and/or agent(s) named on a supplemental sheet attached hereto

Please direct all correspondence to:	<input type="checkbox"/> Customer Number or label	OR	<input type="checkbox"/> Fill in correspondence address below		
Name	ROBERT D. TRAVER				
Address	1560 BROADWAY, SUITE 1200				
Address					
City	DENVER	State	COLORADO	Zip	80202-5141
Country	UNITED STATES OF AMERICA	Telephone	(303) 863-9700	Fax	(303) 863-0223

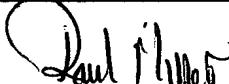
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:	<input type="checkbox"/> A petition has been filed for this unsigned inventor								
Given Name	Mike	Middle Initial		Family Name	Rhodes	Suffix e.g. Jr.			
Inventor's Signature	<i>M.K. R. 1. 1</i>				Date	30/11/01			
Residence City	Mt. Lawley	State	W.A.	Country	Australia	Citizenship	GB		
Post Office Address	26 Woodroyd Street								
Post Office Address									
City	Mt. Lawley	State	W.A.	Zip	6050	Country	Australia	Applicant Authority	
<input type="checkbox"/> Additional inventors are being named on supplemental sheet(s) attached hereto.									

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## DECLARATION

### ADDITIONAL INVENTOR(S) Supplemental Sheet

Name of Additional Joint Inventor, if any:				<input type="checkbox"/> A petition has been filed for this unsigned inventor								
Given Name	Paul			Middle Initial	C.	Family Name	Miller			Suffix e.g. Jr.		
Inventor's Signature							Date	30/11/01				
Residence City	Marmion			State	W.A.	Country	Australia		Citizenship	GB		
Post Office Address	21 Finney Crescent											
Post Office Address												
City	Marmion			State	W.A.	Zip	6020	Country	Australia		Applicant Authority	
Name of Additional Joint Inventor, if any:				<input type="checkbox"/> A petition has been filed for this unsigned inventor								
Given Name	Richard			Middle Initial		Family Name	Winby			Suffix e.g. Jr.		
Inventor's Signature							Date					
Residence City	Mt. Claremont			State	W.A.	Country	Australia		Citizenship	GB		
Post Office Address	4 Lovegrove Close											
Post Office Address												
City	Mt. Claremont			State	W.A.	Zip	60101	Country	Australia		Applicant Authority	
Name of Additional Joint Inventor, if any:				<input type="checkbox"/> A petition has been filed for this unsigned inventor								
Given Name				Middle Initial		Family Name				Suffix e.g. Jr.		
Inventor's Signature							Date					
Residence City				State		Country			Citizenship			
Post Office Address												
Post Office Address												
City				State		Zip		Country			Applicant Authority	
Name of Additional Joint Inventor, if any:				<input type="checkbox"/> A petition has been filed for this unsigned inventor								
Given Name				Middle Initial		Family Name				Suffix e.g. Jr.		
Inventor's Signature							Date					
Residence City				State		Country			Citizenship			
Post Office Address												
Post Office Address												
City				State		Zip		Country			Applicant Authority	

Further applicants and/or (further) inventors are indicated on another continuation sheet

Type a plus sign (+) inside this box →

## DECLARATION

## ADDITIONAL and/or AGENT INFORMATION Supplemental Sheet

Name	Registration Number	Name	Registration Number
CARDWELL, DANA HARTJE	40,638		
DALLAS-PEDRETTI, ANGELA	42,460		
LIEB, BENJAMIN B.	42,801		
KNEPPER, BRADLEY M.	44,189		
TRUDELL, MIRIAM DRICKMAN	42,499		
DuPRAY, DENNIS J.	46,299		
PETERSEN, Todd M.	45,580		
WINTERTON, Kenneth C.	48,040		
TRAVER, Robert D.	47,999		
JOHNSON, Brent P.	38,031		
YASKANIN, Mark L.	45,246		

PTO/ACR Rec'd 21 DEC 2001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

) Group Art Unit:

RHODES et al.

) Examiner:

Serial No.: 09/831,579

) DECLARATION IN SUPPORT OF  
PETITION UNDER 37 C.F.R. 1.47(a)

Int'l. Filing Date: 22 October 1999

)  
EXPRESS MAIL" MAILING LABEL NUMBER: EL7677808466as  
DATE OF DEPOSIT: 12-21-01

Atty. File No.: 1037BP-1

)  
I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING DEPOSITED WITH  
THE UNITED STATES POSTAL SERVICE "EXPRESS MAIL POST OFFICE TO  
ADDRESSEE" SERVICE UNDER 37 C.F.R. 1.10 ON THE DATE INDICATED  
ABOVE AND IS ADDRESSED TO THE ASSISTANT COMMISSIONER FOR  
PATENTS, WASHINGTON, D.C. 20231.

For: "BIO-OXIDATION PROCESS AND  
APPARATUS"

)  
TYPED OR PRINTED NAME: Janice Messer  
SIGNATURE: Janice Messer

Assistant Commissioner for Patents  
Washington, D.C. 20231  
Box: Patent Application

Dear Sir:

The undersigned declares as follows:

1. I am the Australian patent attorney representing BacTech (Australia) Pty Ltd. in patent matters regarding the patent application entitled "BIO-OXIDATION PROCESS AND APPARATUS".
2. I have firsthand knowledge of the facts regarding coinventor Mr. Richard Winby recited herein.
3. On 2 May 2001, I instructed Sheridan Ross, P.C. of Denver, Colorado to file a U.S. Patent application entitled "Bio-oxidation Process and Apparatus" on or prior to 18 May 2001. That application was filed and given Application No. 09/831,579.
4. After filing of the original international application, but prior to filing of the U.S. National Phase application, former CEO of BacTech, and co-inventor of the above-referenced patent application, Mr. Richard Winby, died.
5. Mrs. E. A. Winby, the executor of Mr. Winby's estate, was contacted by Dr. Paul Miller, Technical Manager at BacTech, to raise the issue of Mrs. Winby signing in her capacity as executor for her late husband in compliance with 37 C.F.R. 1.42. Mrs. Winby expressed her reluctance to give her signature to the required declaration at that time although she did not make a specific written or oral refusal. See the Declaration of Dr.

R. M. Z.

R. Faddely

Paul Miller attached hereto and marked Exhibit A.

6. On 22 November 2001, I presented a copy of the application papers to Mrs. Winby for her signature. A copy of all the application papers, including the specification, claims and drawings, was sent to Mrs. Winby at her last known address. See attachments marked Exhibit B.
7. Receipt of these documents by Mrs Winby is evidenced by Mrs Winby's contacting Dr Miller to discuss the documents after receiving them at the end of November 2001 as evidenced by Dr Miller's declaration (Exhibit A).
8. To date, Mrs. Winby has not responded to my mailing, which included a copy of all the application papers, nor has she made an express oral refusal to sign the declaration documents.
9. I have concluded that Mrs. Winby's conduct constitutes a refusal to sign the declaration documents. See MPEP 409.03(c). This conclusion is based on the following facts:
  - a) Mr. Winby was formerly employed by BacTech as CEO until the time of his death.
  - b) Mr. Winby's death occurred during overseas travel to London while performing duties as CEO for BacTech.
  - c) Mrs. Winby attributes her husband's death to the demands imposed by the requirements of his position at BacTech, and I believe this to be the principal reason for her desire to have no involvement with BacTech in further prosecution of the patent rights.
  - d) As evidenced by the mailing documents noted above, Mrs. Winby has had ample opportunity to sign and return all necessary documents but has not done so.

10. The last known address of Mrs. Winby is:

4 Lovegrove Close  
Mt. Claremont  
Western Australia  
Australia 6010

Respectfully submitted,

\_\_\_\_\_  
Richard H. Baddeley

STATE OF WESTERN AUSTRALIA

)  
) ss.  
)

\_\_\_\_\_  
R. H. Baddeley

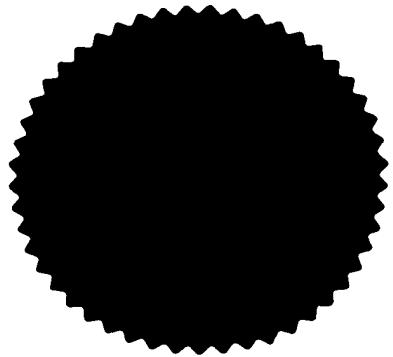
Before me, a Notary Public in and for said State, personally appeared Richard H. Baddeley, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 12th day of DECEMBER, 2001.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Not Applicable

RICHARD JAMES LARRY Mc CORMACK  
Notary Public  
c/- Bar Chambers, 77 St George's Tce  
Perth, Western Australia



COMMONWEALTH OF AUSTRALIA  
THE PATENTS ACT 1990

In the Application of RHODES et al.

Serial No.: 09/831,579

Int'l Filing Date: 22 October 1999

Atty. File No.: 1037BP-1

For "BIO-OXIDATION PROCESS AND APPARATUS

Exhibit "A"

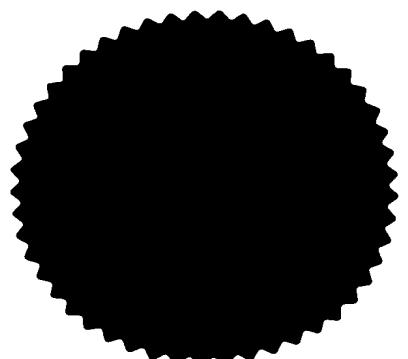
This is the Exhibit marked "Exhibit A" which is referred to in clause 5 of the Declaration  
by Richard Hiram Baddeley.

DATED this 17<sup>th</sup> day of December 2001

*Richard Hiram Baddeley*

Before me: *R. Cormack*

RICHARD JAMES LARRY Mc CORMACK  
Notary Public  
c/- Bar Chambers, 77 St George's Tce  
Perth, Western Australia



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of: ) Group Art Unit:  
RHODES et al. )  
Serial No.: 09/831,579 ) Examiner:  
Int'l. Filing Date: 22 October 1999 )  
Atty. File No.: 1037BP-1 )  
For: "BIO-OXIDATION PROCESS AND )  
APPARATUS" )

Assistant Commissioner for Patents  
Washington, D.C. 20231  
Box: Patent Application

EXPRESS MAIL" MAILING LABEL NUMBER: *EL767780846us*  
DATE OF DEPOSIT: *12-21-01*

I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING DEPOSITED WITH  
THE UNITED STATES POSTAL SERVICE "EXPRESS MAIL POST OFFICE TO  
ADDRESSEE" SERVICE UNDER 37 C.F.R. 1.10 ON THE DATE INDICATED  
ABOVE AND IS ADDRESSED TO THE ASSISTANT COMMISSIONER FOR  
PATENTS, WASHINGTON, D.C. 20231.

TYPED OR PRINTED NAME: *Christine Lerner Janice Messer*  
SIGNATURE: *Janice Messer*

Dear Sir:

The undersigned declares as follows:

1. I am the Technical Manager BacTech (Australia) Pty Ltd. in patent matters regarding the patent application entitled "BIO-OXIDATION PROCESS AND APPARATUS".
2. I have firsthand knowledge of the facts regarding coinventor Mr. Richard Winby recited herein.
3. Mr. Richard Winby, former CEO of BacTech, is a co-inventor of several inventions made during the course of his employment at BacTech. While employed with BacTech, Mr. Winby died.
4. I have had four occasions to speak directly with Mrs. Winby, who is the executor of Mr. Winby's estate, regarding the issue of her signing necessary documents for further prosecution of patent applications in her capacity as executor for the estate. Additionally, I had occasion to leave a message on her answer phone and another occasion to raise the issue with her during her visit to the BacTech office in Kewdale, Australia.
5. My first telephone contact with Mrs. Winby occurred on 8 December 2000. We spoke at considerable length on the issue and Mrs. Winby expressed her reluctance to give her signature to the relevant papers due to unfortunate experiences with signing other documentation related to Mr. Winby's death. We did reach an agreement to discuss the

*Janice Messer*

*R. Lerner*

matter further with Mr. Richard Baddeley at the law offices of Watermark Patent and Trademark Attorneys. Unfortunately, Mrs. Winby never agreed to a date for this meeting to take place.

6. I made two other phone calls to Mrs. Winby on 6 April 2001 and 23 April 2001 attempting to discuss the issue further, but Mrs. Winby refused to discuss the issue in either of those instances.
7. The issue of obtaining Mrs. Winby's signature was later raised again during a visit by Mrs. Winby to BacTech's office in Kewdale, Australia but Mrs. Winby declined to discuss the matter at that time.
8. I also left another message on Mrs. Winby's answerphone raising the issue of obtaining her signature, but Mrs. Winby did not return that message.
9. Mrs Winby contacted me after receiving the application forms mailed to her by Mr Richard Baddeley. We discussed the forms but Mrs Winby persisted in her reluctance to sign the forms.

Respectfully submitted,



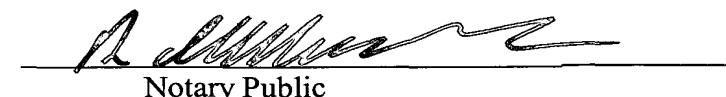
Dr. Paul Miller  
Technical Manager  
BacTech Australia Pty Ltd.

STATE OF

)  
)  
)  
) ss.

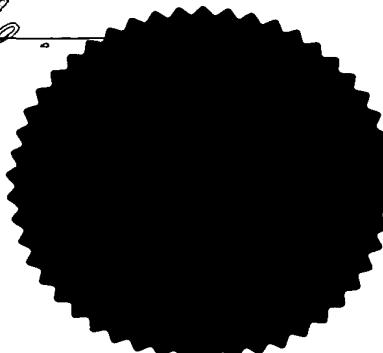
Before me, a Notary Public in and for said State, personally appeared Dr. Paul Miller, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 12th day of December, 2001.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Refugee 

RICHARD JAMES LARRY Mc CORMACK  
Notary Public  
c/- Bar Chambers, 77 St George's Tce  
Perth, Western Australia



**In the Application of RHODES et al.**

**Serial No.: 09/831,579**

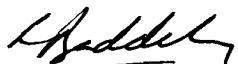
**Int'l Filing Date: 22 October 1999**

**Atty. File No.: 1037BP-1**

**For "BIO-OXIDATION PROCESS AND APPARATUS**

**Exhibit "B"**

This is the Exhibit marked "Exhibit B" which is referred to in clause 6 of the Declaration by  
**Richard Hiram Baddeley.**



DATED this ~~7~~ day of ~~December~~ 2001

Before me: R. H. Baddeley

**RICHARD JAMES LARRY Mc CORMACK**  
Notary Public  
c/- Bar Chambers, 77 St George's Terrace  
Perth, Western Australia

